MEDICAL AND MEDICO/LEGAL MANAGEMENT OF THE SUSPECTED RAPE VICTIM

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RATIONALE FOR EVIDENCE TAKING

The threat of rape is very real for North American women. Consequently the chances that the average practitioner will be required to treat such victims as well as examine them for medical-legal purposes has increased significantly. In 1973 there were 51,000 rapes reported to police in the United States, an increase of 60 per cent since 1968. In Canada, reported rapes rose from 892 in 1968 to 1,593 in 1973, an increase of more than 78 per cent.[1] These statistics become additionally grave in light of the fact that a significant number of rapes are not reported.[2]

Rape is a serious criminal charge. Section 144 of the Criminal Code provides up to a maximum punishment of imprisonment for life.[3]

Not infrequently doctors without previous experience may be confronted with the problem of the duties and responsibilities to the victim and the courts arising out of such circumstances. Unfortunately, if one is not prepared, one may omit some important aspect of the investigation, or perhaps interfere in such a way as to make it difficult for someone else to take over the investigation later.

Of equal importance is the responsibility the physician owes in adequately treating the rape victim. Prevention of venereal disease and pregnancy, as well as provision of psychological support, are essential needs which heretofore have been offered in a hit-and-miss fashion.

The aim of this article is to define the problem, to provide guidelines for the adequate medical management of the alleged rape victim, and a systematic approach to the attendant medical-legal examination for the protection of patient and doctor, as well as in the interest of justice.

Definitions

• **Rape:** Section 143 of Canada's Criminal Code states: "A male person commits rape when he has sexual intercourse with a female person who is not his wife (a) without her consent, or (b) with her consent if the consent is (i) extorted by threats or fear of bodily harm, (ii) is obtained by impersonating her husband, or (iii) is obtained by false and fraudulent representations as to the nature and quality of the act."

Dinstinction should be made between "indecent assault", "seduction" and "rape".

•**Indecent assault** may be defined as manual, oral or genital contact by an offender with the genitalia of the victim, without the victim's consent. Thus indecent assault may be unrelated to sexual intercourse and might have little detectable evidence upon physical examination.

•**Seduction** may be defined as unlawful sexual intercourse through persuasion, promises or bribes without force.

There are separate sections of the criminal code dealing with the offences of indecent assault and seduction.

•**Incest** represents coital contact between a blood relative and child; this is usually the father, but may be a grandfather or uncle. This occurs more commonly than realized, but family embarrassment usually prevents any action being officially taken against the perpetrator.

Other terms which are frequently used and abused when discussing the crime of rape and other related sexual offences include:

•**Statutory rape:** The crime of having sexual intercourse with a female under statutory age, with or without the female's consent.

•**Carnal knowledge:** The act of a man having sexual intercourse with a woman. This terms has been replaced by sexual intercourse in the Canadian Criminal Code.

•**Sexual molestation:** An act performed by a male or female upon a male or female amounting to non-coital sexual contact without consent.

It should be noted that there are no hard and fast rules as to what physical findings are necessary to convict. The physical findings are variable and not prerequisites. However, in a supporting and corroborative role, medical evidence is exceedingly important because the charge of rape basically depends upon (1) proof of intercourse, and (2) lack of consent.

Proof of Intercourse

Sexual intercourse is interpreted as the penetration of the vagina by the penis. For there to be rape, in law, there need not be a laceration of the hymen in children, nor evidence of physical violence to the perineum, nor ejaculation; only contact of the penis between the labia majora may be sufficient to meet the "penetration" element. Thus neither complete penetration nor emission is required.[4]

It should be noted that evidence of trauma is often very significant in attainment of conviction. However, published reports indicate that only 5-8 per cent of rape victims have detectable genital trauma and only 11-30 per cent have external injuries. (Statistics acquired from Emergency Ward treatments – not necessarily police-involved cases.)[5]

Lack of Consent

The question of consent is one of the most difficult aspects in the charge of rape. Proof of lack of consent is essential if there is to be a conviction. However, there are a number of situations which do not constitute lawful consent, despite the fact that consent was given. The law does not recognize that a female under age 16 is capable of giving consent, and intercourse with a female under this age is considered statutory rape. An idiot, imbecile or feeble-minded woman is incapable of giving consent. Consent by fear, force or intimidation – threatening violence to the woman herself or some member of her family – or by blackmail is not consent. Similarly, consent by fraud or the pretence that some sort of medical treatment or examination is taking place is not consent. Intercourse during sleep induced by the non-voluntary consumption or administration of narcotics, drugs or alcohol, while in a state of coma or during an epileptic fit, is intercourse without consent.[4]

When drugs or alcohol are implicated, the examining doctor should make diligent inquiries as to how the alleged drug was given, possible amount given, if there was any special taste, and any symptoms which were experienced (i.e., drowsiness, weakness, nausea, actual loss of consciousness, etc.). Appropriate blood samples should be drawn at the request of the police and with the consent of the victim.

It is essential that an objective non-judgemental stance should be adopted throughout the examination.

PROCEDURE FOR EVIDENCE TAKING

A Systematic Approach

A rapid cursory physical assessment of the victim is performed to determine the presence of physical injuries requiring immediate attention. Active hemorrhage should be controlled and the patient's condition stabilized prior to proceeding with definitive medical-legal assessment.

To protect the attending physician as well as the rights of the patient, the alleged victim's informed consent to examination and treatment must be secured. The physician should tactfully advise the patient as to the need for and nature of the examination, as well as the foreseeable medical complications of her assault, such as possible VD or pregnancy. A third party, preferably a registered nurse, should be present during the examination and collection of specimens. The patient should consent to a complete physical and pelvic examination, the collection of specimens for laboratory examination, the taking of photographs and the release of information to the proper authorities. The consent must be written, signed by the adult patient and properly witnessed. A documented effort must be made for consent of the parent or guardian of a minor. If the parent's or guardian's consent is unobtainable then the consent of "the infant who has attained the age of 16 years . . . shall be as effective as it would be if she were of full age."[6] Please see the consent form included in the Emergency Department Record for Suspected Rape (Figure 1).

A thorough history will ensure that all areas of trauma or sexual contact will be assessed and managed appropriately. As well as date, time and place, the circumstances of the alleged attack must be elicited. Questions should cover use of restraints or force, use of drugs (electively or forced), whether intromission occurred and condom usage. In addition, the victim should be asked if she has bathed, douched, urinated or defecated since the assault. The date and time of last intercourse prior to the alleged rape can be essential. Personal history must cover contraceptive usage, last menstrual period, obstetrical and gynecological experience and present drug use and allergy.

NOTE: The following procedure is keyed to the SEXUAL ASSAULT KIT.

Physical Examination

At the outset of the examination, the patient's emotional state should be noted: whether she is excited, stoic, hysterical, inebriated, calm, nonchalant.

An accurate notation should then be made of the type of clothing worn by the patient and any disturbances in her clothing or general appearance, such as dishevelled hair, torn or disarranged clothing, mud, grass or blood stains and so on. All the patient's clothing, including under-garments, requested by the police should be individually packaged in paper bags, labelled and dated.

Foreign material, such as dirt, sand, hairs, etc., should be collected in paper envelopes, sealed and dated. These are labelled 1B - 1K in the kit. All the above evidence should be given to the authorities who, in turn, should sign an itemized receipt documenting the transfer.

A complete physical examination must be done to include the entire surface of the body, with particular attention to areas allegedly involved in the assault. A careful search should be made for marks of violence, including abrasions, bruises, lacerations and scratches. A second examination after 24-48 hours is suggested if considerable bruising and swelling is anticipated. Positive findings should be noted on body chart.

Vaginal Examination

One should examine the mons, vulva, perineum, anus, rectum, buttocks and thighs for injury or presence of blood or moist dried secretions. All areas of contusion, abrasion or lacerations should be described in detail as to size and location. The labia majora should be separated and the hymen should be characterized as present, intact and free of evidence of trauma; present, intact and shows evidence of old scarring; present and recently ruptured; or absent.

One should inspect the cervix and vagina with a non-lubricated but water-moistened speculum of suitable size. The vaginal wall and cervix should be carefully inspected and any injury described. The presence of foreign material or discharge should be noted as to quantity and color. On the post-menarchal female, a bimanual examination must be performed. Regardless of age, it is imperative to look inside the vagina. A Huffman vaginal speculum is suggested for

adolescent girls and a vaginoscope or a Killian nasal speculum for the child. Consideration should be given to performing the examination under general anesthesia. All lacerations to the perineum should be repaired under general anesthesia in the child.

Collecting and Handling of Evidence

In addition to a proper documentation of positive physical findings, the physician must collect and preserve particular specimens. These include:

1. Blood – C.B.C.
   – A.R.T.
2. Urine – Analysis
   – Pregnancy Test

} These are not required for Forensic preservation.

3. Forensic specimens to be preserved:

Bag 1: Clothing.

Bag 2:

- **A.** Foreign material, dirt, sand, hair, etc. on the body.
- **B.** Swab for any seminar stains on skin.
- **C.** Head hair: Obtain 20 - 30 head hairs (half pulled and half cut from separate scalp locations) and place in envelope.
- **D.** Obtain right and left fingernail clippings and scrapings, placing in appropriate envelopes.
- **E.** If no injury to buccal cavity, saturate swab with saliva for secretor substance testing. Air dry and label. If history indicates oral-genital involvement, use swab to obtain saliva specimen of oral cavity for semen testing. Make smear on one glass slide and label **2E** on frosted end. Return swab to tube and label source.
- **F.** If no buccal cavity injury with bleeding, saturate a piece of filter paper in patient's mouth with saliva, air dry and place in envelope.
- **G.** Blood grouping: 7 - 8 cc. in green-topped tube.
- **H.** Blood alcohol/drugs: 7 - 8 cc. in black screw-topped tube.

Bag 3:

- **A.** Seminar deposits in pubic hair — clip and insert into envelope.
- **B.** Pubic combings: Place paper towel under patient and comb pubic area several times onto towel. Place comb on towel and fold towel to protect evidence. Label and place in envelope.
- **C.** Pubic hair: Pluck 10 - 12 hairs and place in envelope.
- **D.** Foreign material in vagina (dirt, foreign bodies, etc.). Place in envelope.
- **E.** Vaginal swabs: Thoroughly saturate two swabs with content of posterial vaginal vault for acid phosphatase testing and semen typing.
- **F.** Vaginal aspirate: Use syringe and tube to obtain specimen from posterial fornix and insert into black-topped bottle. Submit and label both syringe and bottle.
- **G.** Motility: Make wet mounts from cervical mucous and posterior fornix and examine immediately for sperm presence and motility. Spermatazoa are usually immobilized within two hours in a normal vagina, but may live for up to 72 hours in a favourable cervical mucous.
- **H.** Anal swab and slide: Make a smear and label glass slide **3H** on frosted end. Place swab in container and label.
- **I.** Rectal swab and slide: If history indicates, obtain swab of rectum. Make a smear and label glass slide **3I** on frosted end. Place swab in container and label.
- **J.** Urine sample. Place in black-topped tube. Taken when specimen for analysis and pregnancy test are obtained.

Check all specimens for correct lable, date and closure. Re-read Part III on cover of kit. These procedures are necessary to ensure that no gaps appear in the chain of evidence. Failure to comply may destroy the credibility of evidence and render it inadmissable in court.

Photos may be helpful in documenting a patient's condition and may be taken by either the law enforcement agency or hospital photographer, providing appropriate permissions have been obtained.

PREVENTION OF PREGNANCY

An acceptable regimen employs Ovral 2 tabs as soon after exposure as possible (and must be within 72 hours); and two tabs 12 hours later. Since oral contraceptives are contraindicated in pregnancy, it is recommended that the patient document her intention to seek a termination should the medication fail.

PREVENTION OF INFECTION

The transmission of venereal disease must be considered with gonorrhea and syphilis prevalent in the population. An initial gonorrhea culture as well as a serological test for syphilis should be done. It is suggested that prophylactic antibiotic coverage for gonorrhea using the recommended treatment dose for uncomplicated gonorrhea for 3.5 Gm of Ampillicin plus 1 Gm of probenicid be offered.[7] If the initial culture was positive, a second culture should be done at 2-4 weeks to ensure efficacy of treatment. This does not protect against syphilis so appropriate blood tests should be performed monthly for three months.

Tetanus immunization should be reviewed if abrasions or lacerations are sustained.

PSYCHOLOGICAL TRAUMA

Although the extent and type of psychological injury will vary with age, emotional maturity, previous sexual experience and nature of the assault, all victims need immediate and follow-up psychological support. An informed, understanding and non-threatening relationship must be established to allay initial fears of pregnancy, disease and reaction by family and friends. Mobilization of supportive relationships with specific directions for follow-up counselling are essential if psychological trauma is to be minimized.[8]

Workers are available through Rape Relief centres in British Columbia to give support to rape victims. They are able to give victims psychological support and physical assistance, remain with patients during the medical examination and later provide counselling to help the woman recover from the distressing experience.

MEDICO-LEGAL REPORT

Directly upon completion of the medico-legal procedures and medical care of the patient a report should be generated for the use of the attending authority. The date, time, location of the patient evaluation and the name of the witnessing third party must be included. The report should contain a short descriptive summary of the incident as well as pertinent positive and negative historical and physical findings. A review of specimens collected and their disposition is necessary with results included if available.

The physician should not express conclusions about whether or not rape has occurred. However, an opinion as to whether or not sexual intercourse has taken place should be recorded. It is also important that the physician state an opinion as to whether injuries examined are consistent with assault or sexual assault.

FOLLOW-UP

Definite follow-up instructions should accompany the patient on discharge for re-examination of injuries, further G.C. and A.R.T. examinations, psychological counselling. The patient's family physician could provide a valuable service in this area.

SUMMARY

It is the responsibility of the physician who first evaluates the victim to obtain a detailed verbal history, conduct a comprehensive physical examination, obtain appropriate specimens and accurately record and relay the data s/he collects. When these tasks are combined with the physician's primary responsibilities of prevention of disease, pregnancy and psychological trauma, both the interests of the patient and of justice will be served.

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An earlier version of this article by David G. Hunt, M.D. and Herb Parkison, M.D., appeared in the **B.C. Medical Journal**, Vol. 18, No. 6, June 1976.

EMERGENCY DEPARTMENT RECORD FOR SUSPECTED RAPE

Patient's Name _____ Date _____

Address _____

Telephone _____ Brought By _____ Time _____

Age _____ Race _____ Police Officer in Charge _____

Marital Status _____ HT. _____ WT. _____ Hair _____ Eyes _____

CONSENT

I hereby give consent to have myself or _____ interviewed and examined by _____ Physician, nurse and hospital on this _____ day of _____ 19__ at _____ hours.

I authorize him/her and their delegates to record my history, conduct a physical and pelvic examination, take specimens from my body for appropriate laboratory tests, and prescribe whatever treatments are medically indicated for my better health.

Witness _____ _____

I further authorize him/her and their delegates to gather all necessary forensic evidence, take specimens from my body for appropriate laboratory tests, photograph my injuries if necessary, retain my clothing if necessary for evidence. I understand that the release of a Report of his/her examination and of the release of all legal evidence will only occur with my written permission. (This evidence will be retained for 48 hours, but will then be destroyed if permission is not received by that time)

Witness _____ _____

PHYSICIAN'S OBSERVATIONS OF CLIENT'S GENERAL APPEARANCE

Angry? _____ Frightened? _____ Stoic? _____ Confused? _____ Hysterical? _____ Retarded? _____

Alcohol/drugs? _____ Remarks? _____

HISTORY (Details of Assault)

Physically threatened? _____ How? _____

Intromission? _____ V.D.? _____ Last intercourse? _____ Condom used? _____

Bathe, douche, change of clothes, B.M., mouthwash? _____

Time and place of assault? _____ More than one attacker? _____

Foreign object used? What? Where? _____

Fellatio, cunnilingus, sodomy? _____ Pregnant? _____

Remarks _____

PAST PERSONAL HISTORY

Gravida _____ Para _____ L.M.P. _____

Menstrual history _____ Surgery _____

Allergies _____ Drugs _____ Psychiatric _____

Past Trauma _____

Remarks _____

GENERAL PHYSICAL EXAM Clothing _____ General Appearance _____

Head and Neck _____

Chest _____

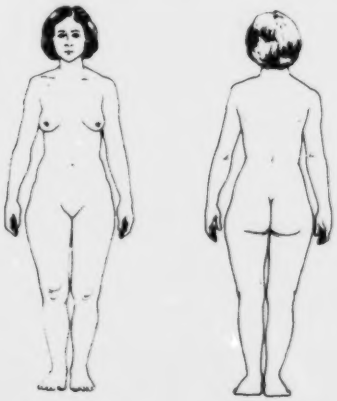
Breasts _____

C.V.S. _____

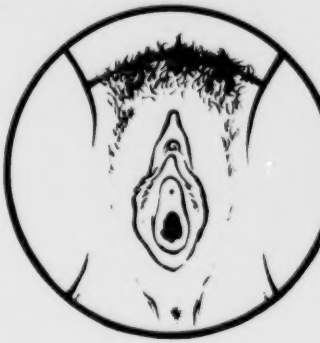
Abdomen _____

Neuro _____

Back, extremities and fingernails _____



PELVIC EXAM



Vulva _____

Hymen _____

Vagina _____

Cervix _____

Fundus _____

Adnexa _____

Rectal _____

DIAGNOSIS (State no opinion regarding alleged rape, but include comments on fractures, abrasions, lacerations, other physical or psychic trauma consistent with assault or sexual assault).

_____

_____

TREATMENT Exam Cleanse Tetanus Toxoid (0.5 cc)

Pregnancy _____

Infection _____

Psychological _____

Other _____

_____

_____

_____ _____

Nurse Examining Physician

LIST OF CLOTHING AND OTHER EVIDENCE

_____

_____

The above has been received by me.

Date _____ Time _____ Signature _____

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